

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	No. 3:08-CR-25
V.	)	(PHILLIPS/SHIRLEY)
	)	
SAMUEL MANNING,	)	
	)	
Defendant.	)	

**MEMORANDUM AND ORDER**

All pretrial motions in this case have been referred to the undersigned pursuant to 28 U.S.C. § 636(b) for disposition or report and recommendation regarding disposition by the District Court as may be appropriate. On June 9, 2008, this criminal action came before the Court for a status conference. Attorney Tracey L. Stone appeared on behalf of the government. Attorney A. Philip Lomonaco appeared on behalf of defendant Samuel Manning.

During the hearing, the Court advised the parties that the Court had been informed by the Bureau of Prisons that defendant Manning's evaluation would not be completed until July 18, 2008, and the associated report would not be completed until some time in August, 2008. Given the September 23, 2008, trial date, the Court voiced concerns as to whether the pending motions could be resolved in the time between the defendant's return and the current trial date. The parties agreed that the September 23, 2008, trial date was not realistic and agreed that the matter should be continued.

In light of the agreement by the parties, the Court finds that the ends of justice served by a continuance outweigh the interest of the defendant and the public in a speedy trial. See 18 U.S.C. § 3161(h)(8)(A). Specifically, the Court finds that failure to grant a continuance under these

circumstances would deny the defendant the reasonable time necessary for effective preparation for trial, resulting in a miscarriage of justice. See 18 U.S.C. § 3161(h)(8)(B)(i),(iv). The Court finds that additional time is needed: to complete the evaluation of defendant Manning; to transport defendant Manning back to this district after his evaluation is completed; to hear argument on the pending motions; for the Court to rule on the pending motions; for the District Court to rule on any objections to any Reports and Recommendations the Court might issue; and for both parties to then prepare for trial based upon the resolution of the pending motions. The Court finds that this could not take place before the September 23, 2008, trial date, or in less than approximately 90 days after the defendant's return from evaluation. Accordingly, the trial in this matter is hereby **CONTINUED** to **December 9, 2008**. Additionally, the Court also scheduled a status conference/evidentiary hearing/motion hearing/competency hearing for **September 9, 2008, at 10:00 a.m.** The Court further notes that any period of delay resulting from any proceeding, including any examination to determine the mental competency of the defendant is automatically excludable, as is any period of delay resulting from transportation of the defendant to or from such examination, and as is any period of delay from any pretrial motion, from the filing of such a motion through the hearing on the motion, including up to a thirty day period after the hearing while the Court takes such motions under advisement. 18 U.S.C. § 3161(h)(1)(A), (F), (H), (J).

Accordingly, the Court finds that all time between the June 9, 2008, hearing and the new trial date of December 9, 2008, is fully excludable time under the Speedy Trial Act. See 18 U.S.C. § 3161(h)(8)(A)-(B)(i) and (iv).

Accordingly, it is **ORDERED**:

(1) The trial of this matter is reset to commence on **December 9, 2008, at 9:00 a.m.**, before the Honorable Thomas W. Phillips, United States District Judge;

(3) All time between the **June 9, 2008**, hearing and the new trial date of **December 9, 2008**, is fully excludable time under the Speedy Trial Act for the reasons set forth above;

(4) A status conference / evidentiary hearing / motion hearing / competency hearing is set for **September 9, 2008, at 10:00 a.m.** before the undersigned.

**IT IS SO ORDERED.**

ENTER:

s/ C. Clifford Shirley, Jr.  
United States Magistrate Judge